

EXHIBIT 4

PAGE 1 SHEET 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 04-11522-WGY

STEVEN R. KINCAID,

PLAINTIFF,

VS.

BANK OF AMERICA
CORPORATION,

DEFENDANT.

DEPOSITION

OF

SHEILA K. BURROUGHS

AT CHARLOTTE, NORTH CAROLINA

JUNE 1, 2005

REPORTER: IRA ANDERSON
NOTARY PUBLIC

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A P P E A R I N G

FOR THE PLAINTIFF: Mr. David J. Fine
LAW OFFICES OF DAVID J. FINE
Three Center Plaza, Suite 400
Boston, Massachusetts 02108-2003

FOR THE DEFENDANT: Mr. Richard T. Kane
ACQUIRE WOODS, L.L.P.
Suite 2000
Bank of America Corporate Center
100 North Tryon Street
Charlotte, North Carolina 28202

IN ATTENDANCE: Mr. Steven R. Kincaid

I N D E X

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Examination by Mr. Fine

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E X H I B I T S

PLAINTIFF'S:

No. 1	Copy of the Affidavit of Sheila K. Burroughs	12
No. 2	Copy of Page from Mr. Kincaid's Review	53
No. 3	Copy of Defendant's Responses to Plaintiff's First Set of Interrogatories to Defendant	101

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1 This is the deposition of Sheila K. Burroughs,
2 taken in accordance with the Federal Rules of Civil
3 Procedure in connection with the above case.

4 Pursuant to Notice, this deposition is being
5 taken in the offices of Hamilton, Fay, Moon, Stephen,
6 Steele & Martin, P.L.L.C., 2020 Charlotte Plaza,
7 201 South College Street, Charlotte, North Carolina,
8 beginning at 1:47 p.m. on June 1, 2005, before Ira
9 Anderson, Notary Public.

10
11 Sheila K. Burroughs, upon first being duly
12 sworn, testified as follows:

13
14 Examination by Mr. Fine

15 Q. Please state your full name.

16 A. Sheila Burroughs.

17 Q. Where do you reside?

18 A. Charlotte, North Carolina.

19 Q. How are you employed?

20 A. At Bank of America.

21 Q. In what capacity?

22 A. I'm currently a customer experience
23 relationship manager.

24 Q. Do you have any other job titles?

25 A. Yes, senior vice president.

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1 Q. When were you first employed by the bank?

2 A. 1989.

3 Q. In what capacity?

4 A. I was a marketing research analyst.

5 Q. How long were you employed in that capacity?

6 A. I think about two years.

7 Q. And how did your employment change at that
8 point?

9 A. After that I was asked to join the branch
10 development group.

11 Q. The branch development group?

12 A. Uh-huh (yes).

13 Q. What was your job title?

14 A. I don't remember. Branch development analyst,
15 probably.

16 Q. How long were you in the branch development
17 group?

18 A. A couple years.

19 Q. Okay. Then where did you go?

20 A. After branch development I went to, I was a
21 quality consultant in the services company.

22 Q. A quality consultant to what?

23 A. In the services company.

24 Q. How long did you do that?

25 A. A couple years.

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- 1 Q. Okay. And then what did you do?
- 2 A. Then we developed the vendor management group
- 3 and I joined that group.
- 4 Q. What was your job title?
- 5 A. Vendor manager.
- 6 Q. Okay. How long were you in that group?
- 7 A. A couple years.
- 8 Q. Okay. And then what did you do?
- 9 A. After branch, or after vendor management I
- 10 went to GCIB marketing.
- 11 Q. I'm sorry?
- 12 A. GCIB marketing.
- 13 Q. What does GCIB stand for?
- 14 A. Global corporate and investment banking.
- 15 Q. How long did you do that?
- 16 A. About two years.
- 17 Q. Okay. And then what did you do?
- 18 A. Then I went to consumer marketing.
- 19 Q. What was your job title then?
- 20 A. I had a couple. The first one was brand and
- 21 customer satisfaction research manager, then
- 22 the customer satisfaction manager.
- 23 Q. How long were you with consumer marketing?
- 24 A. I think I was there two-and-a-half years.
- 25 Q. Okay. And then where did you go?

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- 1 A. Then I went to customer service and support.
- 2 Q. What year was that?
- 3 A. 2003.
- 4 Q. When in 2003 did you go to customer services
- 5 and support?
- 6 A. In July.
- 7 Q. And are you still there?
- 8 A. I am.
- 9 Q. Okay. When did you start with consumer
- 10 marketing?
- 11 A. In January.
- 12 Q. Of what year?
- 13 A. '99. No, wait, I'm sorry, that might not be
- 14 right. 2001. It could have been 2000, I'm
- 15 not really sure.
- 16 Q. Have all of the positions that you've had with
- 17 the bank been in Charlotte?
- 18 A. Yes.
- 19 Q. Okay. Starting with high school, can you
- 20 briefly describe your educational background?
- 21 A. Uh-huh (yes). I went to high school.
- 22 Q. Where?
- 23 A. Two of them, actually. The first two years
- 24 were at Guilford High School in Rockford,
- 25 Illinois.

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- 1 Q. Rockford, did you say?
- 2 A. Yes.
- 3 Q. And the second high school?
- 4 A. Was Riverside High School.
- 5 Q. Where was that?
- 6 A. In Greer, South Carolina.
- 7 Q. Okay. And after high school?
- 8 A. I went to the University of South Carolina.
- 9 Q. Did you get a degree from there?
- 10 A. I did.
- 11 Q. What year?
- 12 A. 1989.
- 13 Q. A bachelor of arts degree?
- 14 A. A bachelor of science.
- 15 Q. What was your major?
- 16 A. I had two, marketing and management.
- 17 Q. Have you had any formal education since then?
- 18 A. No.
- 19 Q. What was your first full-time employment after
- 20 graduating from the University of South
- 21 Carolina?
- 22 A. Bank of America, the first job you asked
- 23 about.
- 24 Q. When you first joined consumer marketing, who
- 25 was your supervisor?

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- 1 A. Mark Webber.
- 2 Q. And how long was Mr. Webber your supervisor?
- 3 A. About a year.
- 4 Q. Who was your supervisor after that?
- 5 A. Directly after that his position was open, so
- 6 in the interim I reported to Vipin Mayer.
- 7 Q. All right, what was Mr. Webber's position?
- 8 A. He was the director of marketing research.
- 9 Q. And what was Mr. Mayer's position?
- 10 A. He was the head of consumer analysis modeling
- 11 and research or CAMR.
- 12 Q. All right. So after Mark Webber left his
- 13 position as the director of marketing
- 14 research, that position was open?
- 15 A. Uh-huh (yes).
- 16 Q. And then, and during that period Vipin Mayer
- 17 was your supervisor on an interim basis?
- 18 A. Right.
- 19 Q. Okay. And then who was your supervisor after
- 20 that?
- 21 A. Well, then we reorganized so my group was no
- 22 longer a part of marketing research, but it
- 23 still had no head. So I reported to another
- 24 vacant position which reported to Vipin, so I
- 25 was still reporting to Vipin in the interim.

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- 1 ongoing thereafter.
- 2 Q. Okay. And your team was transitioned to
- 3 Mr. Kotopoulos when?
- 4 A. In the December time frame. I can't remember
- 5 when the formal date was.
- 6 Q. Okay. And so how many different employees did
- 7 you discuss with Mr. Kotopoulos at that time?
- 8 A. Including myself, four.
- 9 Q. Okay. And so there was you, Mr. Kincaid, and
- 10 who were the other two?
- 11 A. Susan Haloulos and Allison Hart.
- 12 Q. Susan Haloulos still works for the bank today,
- 13 right?
- 14 A. She does.
- 15 Q. What about Allison Hart?
- 16 A. She still works here too.
- 17 Q. Okay. And so you talked to, started talking
- 18 to Alec Kotopoulos regarding you and
- 19 Mr. Kincaid and Ms. Haloulos and Ms. Hart
- 20 starting in around December of 2002 or January
- 21 of 2003?
- 22 A. Yes.
- 23 Q. Okay. When is the first time that you
- 24 discussed with Mr. Kotopoulos the possibility
- 25 of terminating Mr. Kincaid's employment?

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- 1 A. The possibility?
- 2 Q. Yes.
- 3 A. That would have been in the late March, early
- 4 April time frame is the discussion regarding
- 5 the performance is not really, not meeting
- 6 expectations. And I would have discussed
- 7 prior to the memo that we gave him, as that
- 8 was the first step to ensuring that an
- 9 associate understands that their performance
- 10 must improve.
- 11 Q. Who raised the possibility of terminating
- 12 Mr. Kincaid's employment?
- 13 A. I don't remember for sure. Maybe Alec.
- 14 Q. And what did he say on that subject?
- 15 A. I don't remember his specific words. The
- 16 sentiment was, we need to make sure that he
- 17 meets expectations. And since he's not at
- 18 this point, we need to make sure that he makes
- 19 the relevant, proper improvement in a timely
- 20 way.
- 21 Q. Okay. And when -- and was the discussion of
- 22 the possibility of terminating Mr. Kincaid's
- 23 employment referred to in any e-mails between
- 24 you and Mr. Kotopoulos?
- 25 A. I don't think so.

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- 1 Q. Did you have any discussion with
- 2 Mr. Kotopoulos about who was going to take
- 3 over Mr. Kincaid's responsibilities if he was
- 4 terminated?
- 5 A. No.
- 6 Q. Why not?
- 7 A. Because the plan is to make sure that an
- 8 associate understands where they're not
- 9 meeting expectations and to help them to
- 10 improve.
- 11 Q. Well, wouldn't it have been natural, if you
- 12 were thinking of terminating an employee, to
- 13 talk about how long it would take you to get a
- 14 replacement for that employee?
- 15 A. No. Not at -- we did not at that point, no.
- 16 Q. I understand you're saying that you didn't at
- 17 that point. I'm asking you whether wouldn't
- 18 it have been natural to do that?
- 19 A. I'm not sure I understand the question. We
- 20 didn't.
- 21 Q. Right. I take it you thought that
- 22 Mr. Kincaid's job, what Mr. Kincaid was being
- 23 asked to do in your group was important,
- 24 right?
- 25 A. Yes.

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- 1 Q. You thought that it was integral to the
- 2 operation of your group, right?
- 3 A. It was.
- 4 Q. Okay. Who did you get to replace Mr. Kincaid
- 5 after you terminated him?
- 6 A. Actually, I was not there after that and so I
- 7 do not know.
- 8 Q. Well, you didn't say you didn't know in your
- 9 answers to interrogatories, did you?
- 10 A. I don't believe that anyone was hired to take
- 11 on Steve's work.
- 12 Q. Okay. Now, how is that possible if what
- 13 Mr. Kincaid was doing was so integral to the
- 14 operation of your group? How is it possible
- 15 that you terminated him and then no one was
- 16 hired to take over his responsibilities?
- 17 A. Well, clearly, when there was not a project
- 18 manager to do the work and I was no longer
- 19 there to direct the work, the work at that
- 20 time was not, apparently, deemed a priority by
- 21 the folks that remained.
- 22 Q. When is the first time that you had a
- 23 discussion with anybody about your leaving the
- 24 group that you were in?
- 25 A. I don't remember.

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- 1 Q. Was it before Mr. Kincaid was terminated?
- 2 A. Yes.
- 3 Q. And did anybody else leave your group? I
- 4 mean, Mr. Kincaid was terminated, you left the
- 5 group. What happened to Ms. Haloulos and
- 6 Ms. Hart, did they leave too?
- 7 A. Mrs. Haloulos did not leave, Mrs. Hart did
- 8 leave.
- 9 Q. Okay. Now, don't you know what that looks
- 10 like, Ms. Burroughs?
- 11 A. I'm not sure what your question is.
- 12 MR. KANE: I don't -- yes.
- 13 Q. Isn't it clear that what happened here was
- 14 that you and Mr. Kotopoulos decided to
- 15 terminate Mr. Kincaid not because of any
- 16 deficiency in his performance, but because you
- 17 were deciding to disband this group?
- 18 A. Absolutely not. Mrs. Hart and I were both
- 19 replaced.
- 20 MR. FINE: Did you get that?
- 21 COURT REPORTER: Yes.
- 22 Q. Ms. Hart and you were both replaced?
- 23 A. Yes.
- 24 Q. Who replaced you?
- 25 A. Gerry McDonough.

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- 1 Q. Who replaced Ms. Hart?
- 2 A. Glen Grazier.
- 3 Q. Where was Gerry McDonough working before he
- 4 took over your job?
- 5 A. He was outside the bank. I don't remember
- 6 where he came from.
- 7 Q. He wasn't working for the bank?
- 8 A. Huh-uh (no).
- 9 Q. So how long did it take the bank to recruit
- 10 Mr. McDonough?
- 11 A. I'm not sure.
- 12 Q. When was the first time that anybody was
- 13 contacted in terms of looking for your
- 14 replacement?
- 15 A. I don't know.
- 16 Q. Well, you left in, when was it?
- 17 A. I started my new job in July.
- 18 Q. Okay. And when did Mr. McDonough come on
- 19 board in your --
- 20 A. I don't know.
- 21 Q. Is that information that would be readily
- 22 accessible at the bank, when Mr. McDonough
- 23 started?
- 24 A. Oh, I'm sure, yes.
- 25 Q. Okay. And would it also be clear when the

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- 1 bank first started looking for your
- 2 replacement?
- 3 A. I don't know.
- 4 Q. Do you know what, whether the bank used any
- 5 kind of search firm to look for your
- 6 replacement?
- 7 A. I don't know. They may have. We routinely
- 8 use them, but I don't know if they did in that
- 9 case.
- 10 Q. Well, without using a search firm, do you have
- 11 any idea how they could have found
- 12 Mr. McDonough?
- 13 A. Well, we do internal recruiting as well, so --
- 14 Q. But Mr. McDonough wasn't working at the bank,
- 15 right?
- 16 A. No, but we do postings on the Internet and you
- 17 can find job searches at BankofAmerica.com.
- 18 Q. Okay. And when was your job posted for the
- 19 first time?
- 20 A. I'm not sure. I didn't need to follow that, I
- 21 was leaving the job. That was up to the
- 22 person hiring for it.
- 23 Q. And Allison Hart, who replaced Allison Hart?
- 24 A. Glen Grazier.
- 25 Q. And before he replaced Allison Hart, where had

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- 1 Glen Grazier been working?
- 2 A. I don't know.
- 3 Q. Had he been working at the bank?
- 4 A. I don't think so.
- 5 Q. And when was Allison Hart replaced?
- 6 A. I don't know.
- 7 Q. Other than talking to Mr. Kotopoulos, did you
- 8 talk to anybody else at the bank about
- 9 terminating Mr. Kincaid's employment?
- 10 A. I spoke with the personnel center.
- 11 Q. And who at the personnel center did you speak
- 12 to?
- 13 A. I spoke to a number of different agents there
- 14 I'm not sure of all their names.
- 15 Q. Okay. What are the names that you remember
- 16 that you spoke to?
- 17 A. I remember Onya and I remember Andrea; that's
- 18 all I remember.
- 19 Q. And what did you speak to Onya and Andrea
- 20 about?
- 21 A. The initial conversations were regarding
- 22 counseling Mr. Kincaid, ensuring that I was
- 23 delivering the messages appropriately and
- 24 properly, and I also discussed with them the
- 25 appropriate process for the actual

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